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May 20, 2004

Ref: ENF-L

BY FACSIMILE AND U.S. MAIL

Kevin Murray, Esq.
LeBoeuf, Lamb, Greene & MacRae
1000 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

Dear Mr. Murray:

I have received and reviewed your letter dated May 19, 2004. It appears from your response that PacifiCorp refuses to acknowledge the fact that there is evidence indicating that their former lessee, Intermountain Insulation, performed operations on PacifiCorp property which likely caused contamination of surrounding properties with amphibole asbestos. Indeed, PacifiCorp's own "3rd West Substation Site History Report" states that "it may be inferred that the building was erected to house II's operations...." (page 6). Whether or not exfoliation occurred in this building between 1941 and 1954, it is uncontested that other operations involving Libby vermiculite (e.g., mixing for plasters, bagging, etc.) occurred on the property during that time period. As I indicated to Mr. Jenkins in my letter of April 27, 2004, these types of operations would release high levels of fibers. Nonetheless, I have tried to accommodate, where appropriate, the requests you have made. EPA's responses to your requests are presented in the same order as put forth in your letter.

1. Work Plans. As long as the Work Plan document is substantively correct, EPA does not care if it is in the form of two plans or one consolidated plan. The draft Administrative Order on Consent ("AOC") will be modified to reflect one plan with two phases of work.

2. Findings of Fact. Despite your statements concerning the uncertainty of the location of Intermountain Insulation's operations, PacifiCorp has already acknowledged that such operations probably occurred on its property. The draft AOC has three subparagraphs concerning "high levels" of amphibole asbestos. The first two relate to the results of experimentation performed by W.R. Grace, EPA and others concerning the friability and mobility of amphibole asbestos when disturbed. The results clearly show the generation of **high** levels of fibers during ordinary disturbance. Despite PacifiCorp's objections, these are facts and are important for a court to understand the context of the endangerment presented in this case. These paragraphs

will not be changed. PacifiCorp's reference to a 1% level is meaningless in the context of amphibole asbestos risk and will not be considered for inclusion in the AOC. The third reference to high levels of amphibole asbestos concerns concentrations in soils and dust at the site. Both the Action Memorandum and the supporting Endangerment Memorandum use terms such as "elevated" levels and "very significant" amounts of amphibole asbestos in soil and dust. In an attempt to mitigate PacifiCorp's concern about "unnecessary, confusing and potentially misleading" statements, EPA will agree to change the term "high" in the last subparagraph to "elevated". EPA will also change the term "causes" in the subparagraph concerning asbestos-related disease to "may cause".

3. Conclusions of Law. The Conclusions of Law will be left as is.

4. Reporting. To the degree that no amphibole asbestos is left on-site, I would agree with you. Unfortunately, my understanding is that it may be necessary to leave contaminants below the substation superstructure, buried under a layer of gravel. If residual contamination is left in place, an institutional control may be necessary and current paragraph 19(c) will have a different meaning than you suggest.

5. Final Report. Contracts between PacifiCorp and its contractors and environmental consultants are relevant to compliance with the AOC. Thus, copies of these documents would be required as an appendix to the final report. Copies of contracts between yourself and PacifiCorp would not be relevant and not required as part of the final report.

6. There was no #6.

7. Split Samples. The change requested will be made, with the understanding that EPA will not be giving notice to PacifiCorp for split samples it will be taking during PacifiCorp sampling events.

8. Off-Site Shipments. The language in paragraph 21(b) is model language that has been in most Superfund agreements for years. The language will be interpreted by a court as the court deems appropriate.

9. Access. EPA has already made substantial revisions to the model language to reflect PacifiCorp's concerns about access to the property. Some of these concerns are very valid and EPA has made every attempt to ensure that the language reflected consideration of such safety issues. As to 40-hour training, I refer you to 29 C.F.R. 1910.120(e)(3)(i). The journeyman needs to meet the same requirements as a supervisor would. The 40-hour training requirement will not be changed. The access language will be changed to reflect that a journeyman need not accompany EPA employees or representatives "where electrical equipment is not located, when such areas are demarcated by physical barriers (fences and walls)."

10. Confidential Information. Paragraph 27 does not require PacifiCorp to divulge the contents of otherwise privileged documents. Rather, it indicates that the Vaughn list include a description of the contents. No change to the language is necessary. The last sentence

of paragraph 27 requires that documents generated or created pursuant to the requirements of the AOC not be privileged. The AOC does not require the creation or generation of any document which would contain privileged information. Therefore, EPA does not understand your objection and is changing the language of paragraph 27.

11. Notice of Releases. As pointed out in paragraph 34, the requirement stated therein is not in lieu of the CERCLA notice provisions; it is in addition to that requirement. The reportable quantity for asbestos is one pound. Far less than one pound of friable amphibole asbestos could, if disturbed, produce huge numbers of respirable fibers. The RQ cannot be the threshold for paragraph 34.

12. Stipulated Penalties for Work Takeover. First, I assume that any party who enters into an AOC with EPA is "conscientious" and "cooperative" at the time it executes the AOC. I don't see how this distinguishes PacifiCorp from all other parties who execute AOCs with this provision. Second, PacifiCorp indicates that a "trust EPA" is not sufficient, but then suggests that a "trust PacifiCorp" is. Unlike PacifiCorp, EPA has a duty to see that the work is performed in a timely and safe manner. The work takeover stipulated penalty is one component of the incentives necessary to ensure that. EPA is unwilling to remove this stipulated penalty.

13. Email. I am hesitant to make the change you suggest. EPA personnel receive so much email each day it can be impossible to catch or respond to individual important messages. In addition, I am not sure how the confirmation will work with EPA's security system. Many of the messages we receive have had attachments stripped-off by our security systems. EPA would be willing to have further discussions on this.

14. Miscellaneous Issues. Typos and other small errors will be corrected in the next draft.

Please let me know when you have had time to review this response and when you will be available for further discussions.

Sincerely,

Matthew Cohn
Legal Enforcement Program

cc: Kelcey Land, ENF-L
Floyd Nichols, EPR-ER